
CITY COUNTY COUNCIL

PROPOSAL NO. 168, 2015

CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

INTRODUCED: 06/08/2015

REFERRED TO: Committee of the Whole

SPONSOR: Councillors Osili, Adamson, Mascari, Gray and Oliver

DIGEST: authorizing the filing of a lawsuit challenging the legal validity of the Vision Fleet contract

SOURCE:

Initiated by: Public Works Committee

Drafted by: Fred Biesecker, General Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

PROPOSED EFFECTIVE DATE:
Adoption and approvals

GENERAL COUNSEL APPROVAL: _____

Date: June 5, 2015

CITY-COUNTY COUNCIL RESOLUTION NO. _____, 2015

PROPOSAL FOR A COUNCIL RESOLUTION authorizing the filing of a lawsuit challenging the legal validity of the Vision Fleet contract.

Whereas, on December 12, 2012, Mayor Ballard issued Executive Order No. 6, 2012, declaring that it is city policy "to purchase and/or lease electric vehicles and/or plug-in hybrid electric vehicles to meet all of its passenger vehicle needs," and that the Purchasing Division of the Office of Finance and Management ("OFM") would be responsible for implementing the Executive Order; and

Whereas, in August 2013, Mayor Ballard executed a Memorandum of Understanding with Vision Fleet Company ("Vision"), giving Vision "exclusivity to make reasonable progress on the deal," and stating that the parties "wish to utilize this MOU as a framework for a definitive agreement"; and

Whereas, on February 18, 2014, the city entered into a no-bid, long-term \$32 million "Lease Agreement" with Vision for 425 electric and/or plug-in hybrid cars; and

Whereas, the Lease Agreement was entered into illegally for at least five separate reasons: (1) it was not competed under IC 5-22-7 or IC 5-22-9; (2) it was not handled by the purchasing division of OFM; (3) it was not approved by the board of public works; (4) it was for a term in excess of 4 years, contrary to IC 5-22-17-3(b); and (5) it did not specify that payment and performance obligations are subject to the appropriation and availability of funds, as required by IC 5-22-17-3(d); and

Whereas, in June 2014, at the city's request, Vision executives signed a new document entitled "Master Fleet Agreement," which made no reference to the original Lease Agreement; and

Whereas, the actual signature dates of the Vision executives (June 12 and June 13) were then whited out and backdated to February 18, 2014, and the cover page of the agreement was also backdated to February 18, 2014, in an effort to mislead the council and the public and conceal the existence of the original Lease Agreement; and

Whereas, on October 28, 2014, Mayor Ballard publicly announced the Vision deal; and

Whereas, the first version of the Vision contract provided to council staff contained unjustified redactions as well as the altered and backdated signature page and cover page; and

Whereas, when a complete copy of the contract was finally produced in late April 2015, it still contained the altered and backdated signature page and cover page and made no mention of the original Lease Agreement; and

Whereas, despite the city's belated effort to characterize the Vision contract as a "services agreement," under state law it is a lease-purchase agreement for supplies; and

Whereas, even assuming that it is a services agreement, it would still be illegal because it was not handled by the purchasing division of OFM and was not approved by the board of public works, both of which are required by local ordinance; and

Whereas, on May 21, 2015, the council's Public Works Committee voted to request the preparation of this resolution; now, therefore

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The council hereby authorizes its general counsel and clerk to prepare and file a lawsuit challenging the legal validity of the "Master Fleet Agreement" between Indy-Vision Funding I, LLC, and the Consolidated City of Indianapolis, Indiana, acting through its Department of Public Works, dated (actually, backdated) February 18, 2014, as well as all amendments thereto and any predecessor agreements or other related agreements.

SECTION 2. The lawsuit may seek any and all appropriate relief, including preliminary and permanent injunctive relief and a declaratory judgment that the contract was void from its inception and/or is otherwise voidable, illegal and unenforceable.

SECTION 3. The lawsuit will be conducted in accordance with the litigation procedures set forth in Council Rule 151-7.

SECTION 4. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this ____ day of _____, 2015, at ____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

NaTrina DeBow
Clerk, City-County Council

The foregoing was passed by the City-County Council this ____ day of _____, 2015, at ____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

NaTrina DeBow, Clerk, City-County Council